

10/018,412

REMARKS

Claims 8, 10, 11 and 13 are rejected, under 35 U.S.C. § 102, as being anticipated by Nakamura et al. '414. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

As the Examiner is aware, in order to properly support an anticipation rejection under 35 U.S.C. § 102 the applied reference must disclose each and every limitation of the presently claimed invention. Claim 8 has been amended to specifically recite ".....a hydraulic pump (1) and a separate hydraulic motor (3) being interconnected in the hydraulic power branch and retained in a transmission housing (7) via elastic damping elements (5).....". Nakamura et al. '414 does not disclose, teach, or even suggest a separate hydraulic pump and hydraulic motor interconnected and retained in a transmission housing via elastic damping elements.

Further to the above, observing Figs. 3 and 4 of Nakamura et al. '414, the hydrostatic stepless transmission HST 8 may arguably show a hydraulic pump and hydraulic motor, however the vertical collective arrangement of the hydraulic pump and motor in this reference is particularly different than the presently claimed invention. The hydraulic pump and the hydraulic motor are collectively vertically fixed without damping elements in the transmission housing 3. Nakamura et al. '414 does not coaxially align the pump and motor as in the present invention. Nakamura et al. '414 actually discloses two transmission housings 3 and 11 interconnected via elastic damping elements, specifically where the housing 3 is attached to the housing 11 by the described damping device.

As now recited in claim 8 above, in the present invention the hydraulic pump (1) and the separate hydraulic motor of the present invention are ".....retained in a transmission housing (7) via elastic damping elements (5) situated only in the area in which the interconnected hydraulic pump (1) and the separate hydraulic motor (3) are connected with one another and with said transmission housing (7)....". There is no area of mutual connection in Nakamura et al. '414

10/018,412

between the pump, motor and transmission housing as specifically recited in the Applicant's claims.

In addition to further clarify this aspect of the present invention, claim 14 has been added to further distinguish the present invention from the reference. Claim 14 now also recites ".....a hydraulic pump (1) coaxially connected to a hydraulic motor (3) at a connection point; a transmission housing (7) supporting the hydraulic pump (1) and the hydraulic motor (3) at the connection point.....". As Nakamura et al. '414 fails to disclose at least this feature of the presently claimed invention, the Applicant respectfully requests withdrawal of the anticipation rejection.

Claims 8 and 9 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Bolinger et al. '003 in view of Lehle et al. '496. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

As the Examiner is aware, in order to properly support an obviousness rejection under 35 U.S.C. § 103(a), the references themselves must provide some teaching, disclosure or suggestion in the combined references that would lead one of skill in the art to combine the references. The Applicant notes that Bolinger et al. '003 relates to noise attenuation means caused by hydraulic units such as fixed and variable displacement axial piston units used in a hydrostatic transmission. The rapid compression and decompression of fluid within the displacement units causes mechanical vibrations which are frequently transmitted to the exterior housing components by way of rigid mechanical mountings causing the housing to vibrate and radiating noise to the ambient environment.

The Applicant notes and has made a thorough study of Lehle et al. '496 and can find no discussion, suggestion or teaching which would (1) indicated that any sort of noise attenuation means is necessary, nor even that axial piston hydraulic units, as discussed in Bolinger et al. '003, could be utilized in the hydrostatic mechanical power distribution transmission of Lehle et al. '496. In fact, Lehle et al. '496 is specifically concerned with the arrangement of the input/output shafts and relative planetary gear sets of such a transmission

06/17/2003 16:49 FAX

10/018,412

and has nothing to do with the noise attenuation discussed in the Bolinger et al. '003 patent. Thus, the Applicant believes these references are drawn to entirely different problems and issues, if not to completely different fields of art and are therefore not believed combinable in any manner.

Even if the two references were combinable, and this is adamantly not conceded by the Applicant, the use of variable displacement axial piston units which some sort of noise attenuation means in Lehle et al. '496 would not permit the specific transmission arrangement as disclosed in Lehle et al. '496 and furthermore would still not disclose, teach or suggest, either expressly or inherently the presently claimed invention of the Applicant's co-axially aligned hydraulic motor and pump having a common support point at which these elements are connected to the transmission housing as specifically recited in the Applicant's claims.

Furthermore, Bolinger et al. '003 and Lehle et al. '496 teach, if anything, a hydraulic pump and a hydraulic motor with fixed shafts between the hydraulic unit and the gear wheel. Lehle et al. '496 does not teach a floatingly supported shaft between the gear wheel and the hydrostatic unit.

Lastly, in view of the Examiner's indication that claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, the Applicant has combined the subject matter of claim 8 and claim 12 as new claim 20 which is thus believed to be allowable.

In view thereof, the Applicant respectfully requests withdrawal of the obviousness rejection. If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the

Okamura et al. '414, Bollinger et al. '003 and Lehle et al. '496 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Scott A. Daniels, Reg. No. 42,462
Customer No. 020210
Davis & Bujold, P.L.L.C.
Fourth Floor
500 North Commercial Street
Manchester NH 03101-1151
Telephone 603-624-9220
Facsimile 603-624-9229
E-mail: patent@davisandbujold.com

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on: June 17, 2003



Scott A Daniels